

Revised Fertilizer Law Draft – July 25, 2007

TITLE 35 - AGRICULTURE
ARTICLE 12 - Commercial Fertilizers and Soil Conditioners

35-12-101 - Short title.

This article shall be known and may be cited as the "Commercial Fertilizer, Soil Conditioner, AND Plant Amendment, ~~and Agricultural Liming Material Act of 1977~~".

35-12-102 - Administration of article.

This article shall be administered by the commissioner of agriculture, referred to in this article as the "commissioner", or his duly authorized representatives.

35-12-103 - Definitions.

As used in this article, unless the context otherwise requires:

(1) ~~"Agricultural liming material" means a product whose calcium and magnesium compounds are capable of neutralizing soil acidity. The commissioner shall set the minimum standard of calcium carbonate equivalent allowable by regulation.~~

(2) (Deleted by amendment, L. 96, p. 101, § 1, effective March 20, 1996.)

(3) "Availability of a plant nutrient" means the immediate potential property of an agent or product to be utilized by a plant ~~and have agronomic value when used according to directions~~. Methods of availability shall be defined by regulation.

(4) ~~"Basic supplier" means a person who produces within Colorado, ships into Colorado, distributes for use in Colorado, or distributes for shipment into Colorado fertilizer materials, soil conditioners, plant amendments, or agricultural liming materials.~~

(5) ~~"Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material.~~

(6) "Bulk fertilizer", "bulk soil conditioner", OR "bulk plant amendment", ~~or "bulk agricultural liming material"~~ means a commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~, respectively, distributed in nonpackaged form or in a container containing more than one hundred pounds.

(7) "Commercial fertilizer" means a fertilizer material, mixed fertilizer, or any other substance containing one or more essential available plant nutrients THAT ~~which~~ is DISTRIBUTED ~~used~~ for its plant nutrient content and which is designed for use and has value in promoting plant growth. It does not include untreated animal ~~and untreated vegetable~~ manures, COMPOST AND TREATED MANURE DISTRIBUTED WITHOUT COMMERCIAL FERTILIZER LABELING CLAIMS, ~~untreated peat moss and untreated peat humus~~, soil conditioners, plant amendments, ~~agricultural liming materials~~, AND ~~gypsum~~ and other products exempted by regulation of the commissioner.

(8) "Commission" means the state agricultural commission.

(9) "Commissioner" means the commissioner of agriculture of Colorado or his authorized agent.

() "COMPOST" MEANS A PRODUCT THAT CONTAINS ONE OR MORE ESSENTIAL AVAILABLE PLANT NUTRIENTS **AND IS DERIVED FROM THE BIOLOGICAL DECOMPOSITION OF ORGANIC MATTER BY MEANS OF COMPOSTING.**

() "COMPOSTING" MEANS THE PROCESS OF BIOLOGICALLY DEGRADING ORGANIC MATERIALS BY CONTROLLED MANIPULATION OF PILES AND WINDROWS, INCLUDING BUT NOT LIMITED TO GRINDING, MIXING OF FEED STOCKS AND BULKING MATERIALS, ADDITION OF LIQUIDS, TURNING PILES, OR MECHANICAL MANIPULATION.

(10) "~~Customer formulated mix~~" means a commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ prepared expressly for, and according to specifications furnished by, the customer prior to mixing.

(11) "Department" means the Colorado department of agriculture and includes the state agricultural commission, the commissioner of agriculture, and all employees and agents of the department.

() "DISTRIBUTE" MEANS TO IMPORT, CONSIGN, OFFER TO SELL, SELL, BARTER OR OTHERWISE SUPPLY A COMMERCIAL FERTILIZER, PLANT AMENDMENT, SOIL CONDITIONER, COMPOST OR TREATED MANURE, FOR USE IN OR SHIPMENT INTO THIS STATE.

(12) "Distributor" means any person who DISTRIBUTES ~~imports or consigns a~~ commercial fertilizer, soil conditioner, plant amendment, or ~~agricultural liming material~~, COMPOST OR TREATED MANURE, ~~or who offers for sale, sells, barter, or otherwise supplies these products for use in or shipment into this state.~~

() "FERTILIZER" MEANS A MATERIAL OR PRODUCT THAT CONTAINS ONE OR MORE ESSENTIAL AVAILABLE PLANT NUTRIENTS.

(13) "Fertilizer material" is a commercial fertilizer which either:

(a) Contains significant quantities of no more than one of the primary plant nutrients, nitrogen, phosphoric acid, and potash; or

(b) Has approximately eighty-five percent of its plant nutrient content present in the form of a single chemical compound.

~~—(14) "Fineness of an agricultural liming material" means the percentage by weight of the material which will pass United States standard sieves of specified sizes. The commissioner shall promulgate regulations which set forth standards of fineness and shall be guided by the specifications for sieve sizes established by the American society of testing materials.~~

(15) "Grade" means the percentage of total nitrogen, available ~~phosphoric acid~~ PHOSPHATE, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis; except that fertilizer materials, bone meal, and similar raw materials may be guaranteed in fractional units.

(16) (a) (I) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) percent

Available Phosphate (P₂O₅) percent

Soluble Potash (K₂O) percent

~~(II) For bone meal tankage and other organic phosphate materials, the total phosphoric acid may also be guaranteed.~~

(III) Guarantees for plant nutrients, other than nitrogen, phosphorus, and potassium, may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form, availability, and minimum quantity of the element set by regulation. The sources of ~~such other~~ nutrients, salts, chelates, and similar compounds are required to be stated on the application for registration and may be included as a parenthetical statement on the label.

~~(IV) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton may be required by regulation.~~

(b) (Deleted by amendment, L. 96, p. 101, § 1, effective March 20, 1996.)

(c) Guaranteed analysis of a CUSTOM ~~customer formulated~~ mix may appear as in paragraph (a) (I) of this subsection (16) or may include the net weight and guaranteed analysis of each plant nutrient or fertilizer material in the mix.

(17) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer, soil conditioner, OR plant amendment. ~~or agricultural liming material.~~

(18) "Label" means the display of all written, printed, or graphic matter on the immediate container of, or a statement accompanying, a commercial fertilizer, soil conditioner, OR plant amendment. ~~, or agricultural liming material.~~

(19) "Labeling" means all written, printed, ~~or~~ graphic ~~matter~~ OR VERBAL INFORMATION on, accompanying, or used in promoting THE SALE OF any commercial fertilizer, soil conditioner, OR plant amendment. ~~, or agricultural liming material,~~ including advertisements, brochures, posters, and television ~~and~~ radio AND INTERNET COMMUNICATIONS ~~announcements used in promoting the sale of commercial fertilizer, soil conditioner, OR plant amendment. or agricultural liming material.~~

(20) (Deleted by amendment, l. 96, P. 101, § 1, effective March 20, 1996.)

(21) "Manufacturing facility" means any place where a commercial fertilizer, soil conditioner, OR plant amendment. ~~, or agricultural liming material~~ is manufactured, produced, compounded, mixed, blended, or in any way altered chemically or physically. Mobile units shall be considered a part of the manufacturing facility where the units are based.

(22) "Mixed fertilizer" is a fertilizer containing any combination or mixture of fertilizer materials.

(23) "Official sample" means any sample of commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ taken by ~~an agent of~~ the department and designated as "official" by the department.

(24) "Packaged fertilizer", "packaged soil conditioner", OR "packaged plant amendment", ~~or "packaged agricultural liming material"~~ means a commercial fertilizer, soil conditioner, OR plant amendment. ~~, or agricultural liming material,~~ respectively, distributed in a closed container containing one hundred pounds or less.

(25) "Percent" or "percentage" means the percentage by weight.

(26) "Plant amendment and soil conditioner guaranteed analysis" means the percentage of each of the ingredients.

(27) "Plant amendments" means any device or substance applied to the soil, plants, or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants, except commercial fertilizers, soil amendments, ~~agricultural liming materials~~, UNTREATED animal and ~~untreated vegetable~~ manures, pesticides, plant regulators, COMPOST AND TREATED MANURES DISTRIBUTED WITHOUT PLANT AMENDMENT LABELING CLAIMS, and other materials THAT ~~which~~ may be exempted by regulations promulgated by the commissioner.

(28) "Plant nutrients" are those chemical or organic forms of nitrogen (N), phosphorus (P₂O₅), potassium (K₂O), other secondary and micronutrients, calcium (Ca), magnesium (Mg), sulfur (S), boron (B), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), or zinc (Zn) which are absorbed by crops and provide the necessary food for the maintenance and growth of plants.

() "PRODUCT" MEANS A COMMERCIAL FERTILIZER, PLANT AMENDMENT, OR SOIL CONDITIONER IN THE PARTICULAR FORM IN WHICH IT IS INTENDED TO BE DISTRIBUTED. FOR PURPOSES OF THIS ARTICLE, ANY PRODUCT THAT DIFFERS FROM ANOTHER PRODUCT WITH RESPECT TO ANY OF THE FOLLOWING CHARACTERISTICS SHALL BE CONSIDERED A SEPARATE PRODUCT THAT REQUIRES ITS OWN INDIVIDUAL REGISTRATION: PRODUCT NAME, COMPOSITION, LABELING CLAIMS OR DIRECTIONS, GRADE, OR GUARANTEED ANALYSIS.

() "PRODUCT NAME" MEANS THE NAME BY WHICH A COMMERCIAL FERTILIZER, PLANT AMENDMENT, OR SOIL CONDITIONER IS SOLD THAT IDENTIFIES IT AS A UNIQUE PRODUCT AND DISTINGUISHES IT FROM ALL OTHER PRODUCTS.

(29) "Registrant" means a person who is registered or is required to be registered to manufacture or distribute commercial fertilizers, soil conditioners, OR plant amendments, ~~or agricultural liming materials~~ under the provisions of this article.

(30) "Sewage sludge, ~~and~~ sewage effluents, AND BIOSOLIDS" means all materials resulting from waste treatment which contain concentrations of organic or inorganic materials.

(31) "Soil conditioner" means a substance, defined by regulation of the commissioner, intended to improve the chemical or physical characteristics of the soil which is sold, offered for sale, or intended for sale. It does not include commercial fertilizers, plant amendments, ~~agricultural liming materials~~, untreated animal and ~~untreated vegetable~~ manures, ~~untreated peat moss~~, ~~untreated peat humus~~, COMPOST AND TREATED MANURE DISTRIBUTED WITHOUT SOIL CONDITIONER LABELING CLAIMS, or any other materials that may be exempted by regulation of the commissioner. Soil conditioners may be sold in package or in bulk.

(32) "Specialty fertilizer" is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, hydroponic facilities, and nurseries.

(33) "Ton" means a net weight of two thousand pounds avoirdupois.

(34) (a) "Treated manures" means substances composed primarily of excreta, plant OR ANIMAL MATERIAL ~~remains~~, sewage sludge, ~~and~~ sewage effluents, AND BIOSOLIDS, or mixtures of such substances which have been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

~~-(b) In "treated manures" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed, the guarantee being stated in multiples of half percentages.~~

~~(35) "Unit" means twenty pounds of plant food or one percent of a ton.~~

(36) "Untreated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have not been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

35-12-104 - Registration.

(1) Each ~~brand and grade~~ PRODUCT of commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material shall be registered by the person whose name appears on the label before being distributed in, into, or for use in this state. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee as established by the agricultural commission. For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, fifty percent of the department's direct and indirect costs of administering and enforcing the provisions of this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover the remaining direct and indirect costs. All registrations shall expire on ~~June 30~~ THE DATE SPECIFIED BY THE COMMISSIONER BY RULE of each year. Each application for registration shall include the following information.

- (i) The name and address of the registrant;
- (ii) The ~~brand~~ PRODUCT NAME;
- (iii) The grade, if a commercial fertilizer;
- (iv) The guaranteed analysis;
- (v) The sources from which the guaranteed plant nutrients, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ derive;
- (vi) One copy of THE PRODUCT LABEL ~~all labeling used in this state for promotion and sale of each of the products being registered.~~

~~—(1.5) Notwithstanding the amount specified for any fee in subsection (1) of this section, the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.~~

(2) and (3) Repealed.

(4) The commissioner may require proof of labeling statements and other claims made for any commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ before he approves any registration. If the registrant makes no claims, the commissioner may require proof of the usefulness and value of the commercial fertilizer, soil conditioner, OR plant amendment ~~or agricultural liming material~~. As evidence of proof, the commissioner may rely on experimental data, evaluations, or advice furnished by experts such as Colorado state university and may accept or reject additional sources of proof in his evaluation of any commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~. In all cases, only experimental proof shall relate to those conditions in Colorado for which use the product is intended.

(5) Commercial fertilizer shall contain the minimum stipulated quantities of plant nutrients required by regulations promulgated by the commissioner.

(6) The commissioner may stipulate by regulation the quantities of active substances required in soil conditioners, OR plant amendments ~~or agricultural liming materials~~ to be sold or distributed for use in this state.

~~(7) NO If a commercial fertilizer, soil conditioner, OR plant amendment or agricultural liming material, not registered in the preceding year in this state SHALL BE is sold or distributed for use in this state without a current registration, a penalty for failure to register as established by the agricultural commission shall be assessed against the person responsible for registration., with each day subsequent to the time of the first sale or distribution for use in the state deemed a separate, continuing violation. The sum total of all such daily penalties shall not exceed five hundred dollars. Any and all such penalties shall constitute a debt and shall be paid by the registrant at the time the application for registration is submitted to the commissioner.~~

~~(8) Each manufacturing facility which THAT produces custom formulated mixes and each distributor of bulk commercial fertilizers, bulk soil conditioners, bulk plant amendments, or bulk agricultural liming materials who does not produce registered commercial fertilizers, soil conditioners, plant amendments, or agricultural liming materials MUST BE REGISTERED WITH shall register on forms furnished by the commissioner. All registrations shall expire on June 30 THE DATE SPECIFIED BY THE COMMISSIONER BY RULE of each year.~~

(9) The registration requirements of SUBSECTION 1 OF this section shall not apply to CUSTOM MIX FERTILIZERS, untreated animal and untreated vegetable manure, untreated peat moss, or untreated peat humus, OR COMPOST AND TREATED MANURES DISTRIBUTED WITHOUT COMMERCIAL FERTILIZER, PLANT AMENDMENT, OR SOIL CONDITIONER LABELING CLAIMS.

35-12-105 - Labels.

(1) Any packaged commercial fertilizer distributed in this state shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

- (a) The name and address of the registrant;
- (b) The net weight;
- (c) The ~~brand~~ PRODUCT NAME and grade;
- (d) The guaranteed analysis in the form specified in section 35-12-103 (16) (a) (I) ~~and in the order specified in section 35-12-103 (13) (a).~~;
- (E) THE DATE OF MANUFACTURE, PROCESSING, PACKAGING OR REPACKAGING OR A CODE THAT PERMITS THE DETERMINATION OF THE DATE; OR IF BULK, THE SHIPMENT OR DELIVERY DATE;
- (F) DIRECTIONS FOR USE AS SPECIFIED BY THE COMMISSIONER IN RULE.

(2) Any commercial fertilizer distributed in this state in bulk shall be accompanied by a printed or written statement showing the information required in subsection (1) of this section.

(3) Any packaged soil conditioner or plant amendment distributed in this state shall have placed or affixed on the container a label setting forth in clearly legible and conspicuous form the following information:

- (a) The name and address of the registrant;
- (b) The net weight or other measure prescribed by regulation;
- (c) The ~~brand~~ PRODUCT NAME;
- (d) An accurate statement of composition, including the percent of each ~~soil conditioner ingredient or each plant amendment~~ ingredient;
- (e) The purpose of the product;

(f) Repealed.

(G) THE DATE OF MANUFACTURE, PROCESSING, PACKAGING OR REPACKAGING OR A CODE THAT PERMITS THE DETERMINATION OF THE DATE; OR IF BULK, THE SHIPMENT OR DELIVERY DATE;

(H) DIRECTIONS FOR USE AS SPECIFIED BY THE COMMISSIONER IN RULE.

(4) Any soil conditioner or plant amendment distributed in bulk in this state shall be accompanied by a printed or written statement showing the information required in subsection (3) of this section.

(5) Any customer ~~or formulated~~ mix delivered in containers shall have placed on or affixed to the container a label, or if delivered in bulk, shall be accompanied by a printed or written statement, which label and statement shall set forth the following information:

(a) The name and address of the manufacturer;

(b) The net weight or measure as prescribed by regulation of the commissioner;

(c) The guaranteed analysis and quantity of each registered product contained in the mix- ;

(D) THE DATE ON WHICH THE PRODUCT WAS MANUFACTURED OR DELIVERED.

(E) DIRECTIONS FOR USE AS SPECIFIED BY THE COMMISSIONER IN RULE.

(6) No product may be labeled, advertised, distributed, or sold as a commercial fertilizer, soil conditioner, OR plant amendment ~~or agricultural liming material~~ unless its substance conforms to the applicable definitions prescribed in this article or in the rules and regulations promulgated by the commissioner pursuant to this article.

~~—(7) Any agricultural liming material distributed, sold, or offered or advertised for sale in this state shall have placed on or affixed to each container a label or tag setting forth clearly in legible and conspicuous form at least the following information:~~

~~—(a) The name and address of the registrant;~~

~~—(b) The net weight;.~~

~~—(c) The brand~~

~~—(d) The identification of the type;~~

~~—(e) The calcium carbonate equivalent, determined by the approved methods of the association of official analytical chemists;~~

~~—(f) The fineness, as defined in section 35-12-103 (17-4).~~

~~—(8) Any agricultural liming material distributed in bulk in this state shall be accompanied by a printed or written statement showing the information required in subsection (7) of this section.~~

(9) No additional substances other than those allowed in section 35-12-103 (13) may be listed or guaranteed on a label or labeling or on a written statement accompanying the bulk distribution of commercial fertilizers, soil conditioners, OR plant amendments, ~~or agricultural liming materials~~ without the permission of the commissioner. The commissioner may allow additional substances to be listed or guaranteed on the label, labeling, or written statement if satisfactory supportive data is furnished to the commissioner in order to substantiate the value and usefulness of the substance. The commissioner may rely on sources other than the department, such as the Colorado state university, for assistance in evaluating the supportive data. If the commissioner permits such additional substances to be listed or guaranteed, the nature of the substances shall be determinable by laboratory methods. The substances shall be subject to inspection and analysis pursuant to methods and procedures prescribed by the commissioner as rules.

(10) The commissioner may allow or require commercial fertilizers, soil conditioners, OR plant amendments, ~~or agricultural liming materials~~ to be sold and labeled by volume in addition to or instead of by weight pursuant to rules and regulations promulgated by him.

35-12-106. Inspection fees.

(1) ~~A~~ ALL registrantS, except those who package only in containers of ten pounds or less, shall pay the commissioner, for all commercial fertilizers, soil conditioners, OR plant amendments ~~or agricultural liming materials~~ distributed in this state, an inspection fee as established by the agricultural commission. FOR THE PURPOSE OF FUNDING RESEARCH ON COMPOST, COMMERCIAL FERTILIZERS, OR SOIL CONDITIONERS, THE COMMISSIONER MAY AUTHORIZE THE TRANSFER OF A PORTION OF THE FEES PAID TO REGISTER SUCH PRODUCTS TO COLORADO STATE UNIVERSITY. For the purpose of funding the groundwater protection fund created in section 25-8-205.5 (8), C.R.S., an additional fee per ton of commercial fertilizer shall be paid to the commissioner as established by the agricultural commission. This increment per ton of commercial fertilizer shall be collected by the commissioner and transmitted to the state treasurer, who shall credit the same to the groundwater protection fund, created in section 25-8-205.5 (8), C.R.S.

(2) Registrants of specialty fertilizers, soil conditioners, OR plant amendments, ~~or agricultural liming materials~~ packaged in containers of ten pounds or less shall pay the commissioner, for all specialty fertilizers, soil conditioners, OR plant amendments, ~~or agricultural liming materials~~ distributed in this state, an inspection fee as established by the agricultural commission

(3) Each person registering any commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ and each person producing custom formulated mixes in this state shall keep adequate records showing the pounds or tonnage shipped to or sold, offered or exposed for sale, or distributed in this state, and the commissioner or his duly authorized representatives have the authority to examine such records to verify the statement of pounds or tonnage.

(4) Each registrant shall file an affidavit WITH THE COMMISSIONER ~~semiannually~~ within forty-five days after THE DUE DATE SPECIFIED BY ~~each January 1 and each July 1 with~~ the commissioner which discloses the pounds or tonnage of commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ sold or distributed in the state during the preceding ~~six~~ TWELVE-month period and other information as required by rules adopted by the department of agriculture. If the affidavit AND OTHER REQUIRED INFORMATION ARE ~~is~~ not filed and the inspection fee is not paid within the forty-five-day period or if the report of pounds or tonnage is false, the commissioner may revoke the registration, AND ASSESS ~~of such person and if the affidavit is not filed and the inspection fee is not paid within the forty five day period,~~ a CIVIL penalty of five dollars per day for each subsequent day shall be assessed. The inspection fee and the penalty shall constitute a debt and become the basis for a judgment against such person.

(5) When more than one person is involved in the distribution of a commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ the last registrant WHO DISTRIBUTED TO A NON-REGISTRANT OR CONSUMER is responsible for reporting the ANNUAL ~~semiannual~~ pounds or tonnage and paying the inspection fee, UNLESS THE REPORT AND PAYMENT IS MADE BY A PRIOR DISTRIBUTOR.

(6) Inspection fees are not required for ingredients which have already been included in the tonnage or pounds for which a Colorado inspection fee has been paid.

(7) The inspection fees required to be paid by this section shall not apply to untreated ~~animal manure, untreated vegetable manure, untreated peat moss, or untreated peat humus~~ OR COMPOST AND TREATED MANURE DISTRIBUTED WITHOUT COMMERCIAL FERTILIZER, SOIL CONDITIONER, OR PLANT AMENDMENT LABELING CLAIMS.

~~—(8) Notwithstanding the amount specified for any fee in this section, the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.~~

(9) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, fifty percent of the direct and indirect costs of administering and enforcing the provisions of this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover the remaining direct and indirect costs. All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-12-107 – County tonnage reports. (Repealed)

35-12-108 - Inspection, sampling, analysis.

(1) ~~It is the duty of the~~ THE commissioner HAS THE AUTHORITY to sample, inspect, make analyses of, and test commercial fertilizers, soil conditioners, plant amendments, ~~and agricultural liming materials,~~ COMPOST, OR TREATED OR UNTREATED MANURE distributed within this state at such time and place and to such an extent as he deems advisable to determine whether such products are in compliance with the provisions of this article. The commissioner, who may act through his authorized agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers, soil conditioners, plant amendments, ~~and agricultural liming materials,~~ COMPOST, OR TREATED OR UNTREATED MANURE subject to the provisions of this article and the rules and regulations adopted by the commissioner pursuant thereto.

(2) The methods of analysis and sampling shall be those adopted by the commissioner from such sources as the INTERNATIONAL association of official analytical chemists, Colorado state university, or other authoritative sources deemed reliable by the commissioner.

(3) The commissioner, in determining for administrative purpose whether any commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ is in violation of this article, shall base such determination solely upon official samples as defined in section 35-12-103 (23) and obtained and analyzed in accordance with subsections (1) and (2) of this section.

(4) The result of an analysis of a sample of any commercial fertilizer, soil conditioner, OR plant amendment ; ~~or agricultural liming material~~ which indicates a deficiency shall be forwarded promptly to the registrant. Upon request within thirty days of the date the analysis report is forwarded, the commissioner shall furnish to the registrant a portion of any official sample. If, within forty-five days after forwarding of the analysis report indicating a deficiency, no adequate evidence contradicting the analysis report is made available to the commissioner, the report of the sample analysis shall become official.

~~35-12-109 – Deviation from guaranteed analysis – penalties.~~

~~(1) If an official analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients, nitrogen, available phosphoric acid, and soluble potash, beyond the investigational allowance and compensations as established by regulation and if the overall index value of the fertilizer is below the level established by regulation, the deficiency shall be evaluated and a penalty of three times the commercial value of such deficiency in the lot of such fertilizer represented by the sample shall be assessed by the commissioner against the registrant.~~

~~—(2) If an official report of a sample analysis shows that a commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material is deficient beyond the investigational allowance as established by regulation in any constituents guaranteed, other than nitrogen, available phosphoric acid, and soluble potash, pursuant to section 35-12-103 (16) (a) (III), the deficiency shall be evaluated and a penalty of three times the commercial value of the deficiency, determined in accordance with the provisions of section 35-12-110, shall be assessed against the registrant by the commissioner.~~

~~—(3) All penalties assessed under this section shall be paid by the registrant of the deficient commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material to the consumer of the deficient commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material within three months after the date of notice from the commissioner to the registrant. Receipt from such payment shall be taken and promptly forwarded to the commissioner. If the purchaser or consumer cannot be found, the amount of the penalty shall be paid to the state treasurer.~~

~~35-12-110 – Commercial value.~~

~~(1) For the purpose of determining the commercial values to be applied under the penalty assessment provisions of section 35-12-109, the commissioner shall determine the values under the applicable provisions of the following:~~

~~—(a) The value per unit of nitrogen, available phosphoric acid, and soluble potash shall be current market value.~~

~~—(b) The value per unit of other plant nutrients, soil conditioner ingredients, plant amending ingredients, and agricultural liming materials shall be determined by reference to the invoice price.~~

35-12-111 - Misbranding.

(1) No person shall distribute a misbranded product. A commercial fertilizer, soil conditioner, OR plant amendment ; ~~or agricultural liming material~~ is misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If it is distributed under the name of another product;

(c) If it is not labeled as required in section 35-12-105 and in accordance with regulations prescribed under this article;

(d) If it purports to be or is represented as a commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~, or is represented as containing a plant nutrient, commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material, unless the plant nutrient, commercial fertilizer, soil conditioner, OR plant amendment, ~~or agricultural liming material~~ conforms to the definitions of terms prescribed by this article or under the regulations promulgated by the commissioner. In the adoption of such regulations due regard shall be given to commonly accepted definitions and official terms such as those issued by the association of American plant food control officials.

(e) If it does not conform to the ingredient form, availability, minimums, labeling, and investigational allowances set forth in the rules and regulations promulgated by the commissioner.

~~(2) Untreated animal manure, untreated vegetable manure, untreated peat moss, or untreated peat humus, is misbranded if not labeled to conform to the definitions of terms prescribed by this article or under the regulations promulgated by the commissioner or if its labeling is false or misleading.~~

35-12-112 - Adulteration.

(1) No person shall distribute an adulterated product. A commercial fertilizer, soil conditioner, plant amendment, ~~or agricultural liming material~~, COMPOST, OR TREATED OR UNTREATED MANURE is deemed adulterated:

(a) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant, animal, or aquatic life, when applied in accordance with directions for use on the label OR NORMAL APPLICATION PRACTICES, or if adequate warning statements or directions for use, which may be necessary to protect beneficial plant, animal, or aquatic life, are not shown on the label;

(b) If its composition falls below or differs from that which it is purported to possess by its labeling;

(c) If it contains unwanted crop seed or weed seed.

(D) IF THE CONCENTRATION OF ANY HEAVY METAL IN THE PRODUCT EXCEEDS THE LEVEL ESTABLISHED BY THE COMMISSIONER IN RULE FOR THAT CONSTITUENT.

35-12-113 - Publications.

The commissioner shall publish at least annually, in such form as he deems proper, information concerning the sales of commercial fertilizers, soil conditioners, OR plant amendments, ~~and agricultural liming materials~~, together with such data on their production and use as he considers advisable, and a report of the results of the analyses based on official samples of commercial fertilizers, soil conditioners, OR plant amendments, ~~and agricultural liming materials~~ sold within the state as compared with the analyses guaranteed under sections 35-12-103 (19 46), 35-12-104, and 35-12-105. ~~The information concerning production and use of commercial fertilizers, soil conditioners, plant amendments, and agricultural liming materials shall be shown separately for the periods July 1 to December 31 and January 1 to June 30 of each year, INFORMATION CONCERNING THE SALES, PRODUCTION AND USE OF COMMERCIAL FERTILIZERS, SOIL CONDITIONERS AND PLANT AMENDMENTS and no disclosure shall NOT IDENTIFY OR OTHERWISE DISCLOSE be made of the operations of any person.~~

35-12-114 - Rules and regulations.

The commissioner or his authorized agent is authorized, pursuant to section ~~24-4-103~~, C.R.S., to adopt and enforce rules TO IMPLEMENT AND ADMINISTER THIS ARTICLE ~~and regulations~~ INCLUDING BUT NOT LIMITED TO RULES relating to sampling, analytical methods, ingredient form, availability, minimums, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling, ~~and the distribution of commercial fertilizers, specialty fertilizers, and soil conditioners, plant amendments, and agricultural liming materials,~~ COMPOST, AND TREATED AND UNTREATED MANURE as may be necessary to carry into effect the full intent and meaning of this article.

35-12-115 - Short weight.

~~If any commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material in the possession of the consumer is found by the commissioner to be short in weight, the registrant or manufacturing facility of the commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material shall within thirty days after official notice from the commissioner, pay to the consumer an amount equal to four times the value of the actual shortage. If the purchaser or consumer cannot be found, the amount of the penalty shall be paid to the state treasurer.~~

35-12-116 - Cancellation of registration or refusal to register.

The commissioner may revoke or suspend the registration of or may refuse to register any ~~grade and brand name of commercial fertilizer, soil conditioner, plant amendment, or agricultural liming material,~~ or MANUFACTURING FACILITY REQUIRED TO REGISTER UNDER SECTION 35-10-104(8), C.R.S., ~~custom formulated plant mix, or distributor of bulk agricultural fertilizer, soil conditioner, plant amendments, and agricultural liming materials~~ upon a finding supported by satisfactory evidence that the registrant or person applying for registration has violated any provision of this article. No registration shall be refused, suspended, or revoked until the registrant has been given NOTICE OF AND AN the opportunity FOR ~~of~~ a hearing pursuant to ARTICLE 4 OF TITLE 24, ~~section 24-4-105~~, C.R.S.

35-12-117 - Stop sale, stop use, or removal orders.

(1) The commissioner may issue and enforce a written or printed stop sale, stop use, or removal order directed to the owner or custodian of any lot of commercial fertilizer, soil conditioner, plant amendment, ~~agricultural liming material,~~ COMPOST, OR TREATED OR UNTREATED manure, ~~peat moss, or peat humus~~ when the commissioner finds the commercial fertilizer, soil conditioner, plant amendment, ~~agricultural liming material,~~ COMPOST, OR TREATED OR UNTREATED manure, ~~peat moss, or peat humus,~~ is being offered or exposed for sale or use or is being used in violation of any of the provisions of this article. The commissioner shall release the commercial fertilizer, soil conditioner, plant amendment, ~~agricultural liming material,~~ COMPOST, OR TREATED OR UNTREATED manure, ~~peat moss, or peat humus~~ from the order when the owner or custodian has complied with requirements of this article and has paid all costs and expenses incurred in connection with the entry and enforcement of such order. ANY PERSON TO WHICH THE COMMISSIONER HAS ISSUED A STOP SALE, STOP USE, OR REMOVAL ORDER MAY REQUEST A HEARING, PURSUANT TO ARTICLE 4 OF TITLE 24, TO DETERMINE WHETHER THE VIOLATION OCCURRED.

(2) IN THE EVENT THAT ANY PERSON FAILS TO COMPLY WITH A STOP SALE, STOP USE, OR REMOVAL ORDER WITHIN TWENTY-FOUR HOURS, THE COMMISSIONER MAY BRING A SUIT FOR A TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF SUCH ORDER.

(3) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE COURT'S CALENDAR.

(4) WHENEVER THE COMMISSIONER POSSESSES EVIDENCE SATISFACTORY TO HIM THAT ANY PERSON HAS ENGAGED IN OR IS ABOUT TO ENGAGE IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED UNDER THIS ARTICLE, HE MAY APPLY TO ANY COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE OR ANY RULE ADOPTED UNDER THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSIONER SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND.

35-12-118 - Seizure, condemnation, and sale.

Any lot of commercial fertilizer, soil conditioner, ~~agricultural liming material~~, COMPOST, OR TREATED OR UNTREATED manure, ~~peat moss, or peat humus~~ THAT which is in violation of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county in which the product is located. In the event the court finds the product to be in violation of this article and orders the condemnation of the product, it shall be disposed of in any manner consistent with the quality of the product and the laws of this state. In no instance shall the disposition of the commercial fertilizer, soil conditioner, ~~agricultural liming material~~, COMPOST, OR TREATED OR UNTREATED manure, ~~peat moss, or peat humus~~ be ordered by the court without first affording the owner an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this article.

~~35-12-119 - Violations - CRIMINAL PENALTIES penalty.~~

~~(1) Any person convicted of violating any provision of this article or any rule or regulation adopted under it may be fined not less than twenty five dollars nor more than one hundred dollars for the first offense and not less than one hundred dollars nor more than five hundred dollars for any subsequent offense committed within a three year period after a prior conviction.~~

~~-(2) Upon learning of a violation or alleged violation of this article, the commissioner may investigate and hold a hearing concerning the nature and extent of the violation. If the commissioner finds that the violation is minor or that the public interest will be adequately served by the issuance of an administrative warning, he may issue a written warning to the alleged violator. If the commissioner finds that the violation is gross, willful, or repeated, he may file a complaint and institute prosecution through an appropriate district attorney. After conviction in such a prosecution, the fact and circumstances of any previous administrative warning to the violator may be considered by the court as bearing upon the amount of the fine to be assessed.~~

~~35-12-120 - Exchange between manufacturers.~~

~~Nothing in this article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers, soil conditioners, plant amendments, or agricultural liming materials to each other by importers, manufacturers, or manipulators who mix these materials for sale or to prevent the free and unrestricted shipments of commercial fertilizers, soil conditioners, plant amendments, or agricultural liming materials to manufacturers or manipulators who have registered as required by the provisions of this article.~~

35-12-121 - INVESTIGATIONS - ACCESS - SUBPOENA.

(1) THE COMMISSIONER, UPON HIS OWN MOTION OR UPON THE COMPLAINT OF ANY PERSON, MAY MAKE ANY AND ALL INVESTIGATIONS NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE.

(2)(A) AT ANY REASONABLE TIME DURING REGULAR BUSINESS HOURS, THE COMMISSIONER SHALL HAVE FREE AND UNIMPEDED ACCESS UPON CONSENT OR UPON OBTAINING AN ADMINISTRATIVE SEARCH WARRANT:

(I) TO ALL BUILDINGS, YARDS, WAREHOUSES, STORAGE FACILITIES, VEHICLES AND ANY OTHER PUBLIC OR PRIVATE PROPERTY, PREMISES OR CARRIERS IN WHICH ANY COMMERCIAL FERTILIZER, SOIL CONDITIONER, PLANT AMENDMENT, COMPOST, OR TREATED OR UNTREATED MANURE IS KEPT, STORED, HANDLED, PROCESSED, DISTRIBUTED OR TRANSPORTED FOR THE PURPOSE OF CARRYING OUT ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE;

(II) TO ALL BUSINESS RECORDS RELATED TO THE PRODUCTION OR DISTRIBUTION OF ANY COMMERCIAL FERTILIZER, SOIL CONDITIONER, PLANT AMENDMENT, COMPOST, OR TREATED OR UNTREATED MANURE, INCLUDING BUT NOT LIMITED TO ANY RECORDS REQUIRED TO BE KEPT BY THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE, FOR THE PURPOSE OF ENFORCING ANY PROVISION OF THIS ARTICLE OR RULE MADE PURSUANT TO THIS ARTICLE.

(B) THE COMMISSIONER SHALL HAVE FULL AUTHORITY TO ADMINISTER OATHS AND TAKE STATEMENTS, TO ISSUE ADMINISTRATIVE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES BEFORE HIM AND THE PRODUCTION OF ALL BOOKS, MEMORANDA, PAPERS, AND OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS, AND TO COMPEL THE DISCLOSURE BY SUCH WITNESSES OF ALL FACTS KNOWN TO THEM RELATIVE TO THE MATTERS UNDER INVESTIGATION. UPON THE FAILURE OR REFUSAL OF ANY WITNESS TO OBEY ANY SUBPOENA, THE COMMISSIONER MAY PETITION THE DISTRICT COURT, AND, UPON A PROPER SHOWING, THE COURT MAY ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. FAILURE TO OBEY SUCH AN ORDER OF THE COURT SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.

(3) COMPLAINTS OF RECORD MADE TO THE COMMISSIONER AND THE RESULTS OF HIS INVESTIGATIONS MAY, IN THE DISCRETION OF THE COMMISSIONER, BE CLOSED TO PUBLIC INSPECTION, EXCEPT AS PROVIDED BY COURT ORDER, DURING THE INVESTIGATORY PERIOD AND UNTIL DISMISSED OR UNTIL NOTICE OF HEARING AND CHARGES ARE SERVED ON A LICENSEE OR REGISTRANT.

35-12-122 - CIVIL PENALTIES.

(1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY REGULATION MADE PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE COMMISSIONER. EACH DAY THE VIOLATION OCCURS OR CONTINUES SHALL CONSTITUTE A SEPARATE VIOLATION. THE MAXIMUM PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS PER VIOLATION.

(2) NO CIVIL PENALTY MAY BE IMPOSED UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND AN OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) IF THE COMMISSIONER IS UNABLE TO COLLECT SUCH CIVIL PENALTY OF IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSIONER, THE COMMISSIONER MAY RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES IN ANY COURT OF COMPETENT JURISDICTION.

(4) BEFORE IMPOSING ANY CIVIL PENALTY, THE COMMISSIONER MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE ABILITY OF THE PERSON CHARGED TO STAY IN BUSINESS.